

PATRICIA MANNING

IBLA 80-530

Decided June 17, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting desert land entry application I-16165.

Remanded.

1. Desert Land Entry: Generally -- Desert Land Entry: Applications

An application for a desert land entry is not properly executed under 43 CFR 2521.2 where the applicant fails to correctly describe the land applied for. Subject to valid intervening rights and competing interests, an applicant may acquire priority from the date of the filing of the statement of reasons on which the correct land description is filed with the BLM State Office.

APPEARANCES: Patricia Manning, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 27, 1980, by the Idaho State Office, Bureau of Land Management (BLM), rejecting desert land entry application I-16165.

The application was filed in response to an order dated September 20, 1979, published at 44 FR 55667 (Sept. 27, 1979), which opened two parcels to desert land application and revoked a previous "initial decision" of September 7, 1978, classifying the two parcels as unsuitable for desert land entry. Parcel "A" was described in the order as constituting the SE 1/4 NE 1/4, SE 1/4 sec. 33, T. 9 S., R. 25 E., Boise meridian, Idaho, and parcel "B" as the S 1/2 SW 1/4, W 1/2 SE 1/4 sec. 34, of the same township. The order also stated that: "All valid applications received between the date of publication of this notice and 10:00 a.m. on October 29, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing."

On her application, filed October 29, 1979, at 10 a.m., appellant applied for land described as follows: "T. 9 S., R. 23 E., B.M., Sec. 34 S 1/2 SW 1/4, W 1/2 SE 1/4." The decision appealed from points out that the lands so described were patented, and that the lands open for simultaneous application were in Range 25 east instead of Range 23 east. It denied the application because it was not properly executed.

Appellant supplied the correct land description on appeal and argues that her application should not have been rejected because of the clerical error she made in describing the land in her application.

[1] The applicable regulation, 43 CFR 2521.2(a)(1), requires that an application for desert land entry must be properly executed. Sandy C. Baicy, 46 IBLA 140 (1980). Since appellant failed to correctly describe the land, the application was not properly executed. Cf. Annie Davies, 34 L.D. 539 (1906). Appellant's notice of appeal and statement of reasons was filed with BLM on March 17, 1980. Therein, appellant correctly described the land applied for. Thus, as of March 17, 1980, there was compliance with the order of opening and appellant's application could be considered subject, of course, to any valid intervening rights or competing interests in the subject land.

We will, therefore, remand the case to the State Office with instructions to consider appellant's application as filed as of March 17, 1980, all else being regular, and subject to prior valid applications.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case file is remanded for further appropriate processing.

---

Frederick Fishman  
Administrative Judge

We concur:

---

Edward W. Stuebing  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge

